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Draft United Nations Convention against Transnational Organized Crime[1]

Article 1
Statement of objectives

Option 1

1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

Option 2

1. States Parties commit themselves to cooperate to the widest extent possible in the prevention and control of transnational organized crime.

2. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy.[2]

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[1]At various stages of the drafting, certain words, sentences or entire paragraphs were placed in square brackets. In the present document, the absence of brackets should not be construed as approval of the text in question by the informal preparatory meeting held at Buenos Aires from 31 August to 4 September 1998.

[2]It was suggested that this paragraph seeking to define organized crime could be placed in a separate article on definitions (article 2 *bis* in the present draft).

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Pomotion of implementation

3. Each State Party shall take effective measures to promote within its territory accountability and the scrutiny of its action in the implementation of this Convention.

4. A State Party may adopt more strict or severe measures than those provided for by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime.

Article 2
Scope of application

Option 1

1. States Parties commit themselves to cooperate to the widest extent possible in combating transnational organized crime. For that purpose, the Convention shall apply to [the prevention, investigation and prosecution of] serious crime, which is defined as any offence punishable [in the requesting State] by imprisonment or other deprivation of liberty of not less than ____ years. The seriousness of the offence may also be inferred from the involvement of a criminal organization in committing the offence, the transnational effect of the offence or any other element typical of organized crime.[3]

Option 2

1. The Convention shall apply to serious crime when the circumstances provide reasonable grounds to believe that a criminal organization was involved in the commission of an offence.

2. "Serious crime" is defined as any offence punishable by imprisonment or other deprivation of liberty of a maximum of at least [...] years.[4]

3. Among the circumstances that may be taken into account in deciding whether there are reasonable grounds to believe that a criminal organization was involved are the following:

(a) The nature of the offence;

(b) The transnational character of the offence;

(c) Whether money-laundering is involved; or

(d) Whether the offence required significant planning or means for its commission.

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[3]This option would include the insertion of an illustrative list of offences into the *travaux préparatoires*. Furthermore, according to this option, the articles on, for example, extradition and mutual legal assistance could include, as grounds for refusal of assistance, "if, in view of the circumstances of the suspected offence, it evidently did not involve a criminal organization and acceding to the request would overburden the authorities of the requested State".

[4]This option would include the insertion of an illustrative list of offences into the *travaux préparatoires*.

Option 3

1. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy, in particular by:

(a) Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[5]

(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[6]

(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[7]

(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[8] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;[9]

(e) Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[10]

(f) Terrorist acts;

(g) Illicit traffic in or stealing of arms and explosive materials or devices;

(h) Illicit traffic in or stealing of motor vehicles;

(i) Corruption of public officials.

2. For the purpose of this Convention, "organized crime" includes commission of an act by a member of a group as part of the criminal activity of such organization.

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[5]United Nations publication, Sales No. E.91.XI.6.

[6]Resolution 317 (IV), annex.

[7]*League of Nations Treaty Series*, vol. 112, p. 171.

[8]United Nations, *Treaty Series*, vol. 823, No. 11806.

[9][To be completed.]

[10]United Nations, *Treaty Series*, vol. 1456, No. 24631.

Non-applicability to offences with solely domestic connections

Option 1

2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State.

Option 2

2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.

Principle of non-intervention

3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Exclusive exercise of jurisdiction and performance of functions

4. A State Party shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions that are exclusively reserved for the authorities of that other State by its domestic law.

Protocols

5. The annexed Protocols form an integral part of this Convention.

Choice of international instrument[11]

6. [insert the provision on the selection of instrument when several international instruments would be applicable]

7. States Parties may apply article(s) ____ of this Convention to other multilateral conventions to the extent agreed between States Parties.

Article 2 bis
Use of terms

For the purposes of this Convention:

(a) "Proceeds of crime" means any economic advantage from criminal offences. It may consist of property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;

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[11]This issue is also dealt with in article 24.

(b) "Predicate offence" means any crime or offence as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention.

Article 3
Participation in a criminal organization[12]

1. Each State Party shall undertake, in accordance with the fundamental principles of its domestic legal system, to make punishable one or both of the following types of conduct:

(a) Conduct by any person consisting of an agreement with one or more persons that an activity should be pursued, which, if carried out, would amount to the commission of crimes or offences that are punishable by imprisonment or other deprivation of liberty of at least [ ] years; or

(b) Conduct by any person who participates in a criminal organization, where such participation is intentional and is either with the aim of furthering the general criminal activity or criminal purpose of the group or made in the knowledge of the intention of the group to commit offences.

2. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4
Money-laundering[13]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

(a) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

(b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is the proceeds of crime;

and, subject to its constitutional principles and basic concepts of its legal system,

(c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:

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[12]It was suggested that this article provided a good basis for discussion, since it served as a bridge between civil and common law systems. However, one delegation considered the concept to be complex, requiring further analysis.

[13]It was suggested that the lack of a definition of money-laundering in this article would need to be addressed. It was also suggested that such a definition should cover a broad range of predicate offences.

(a) It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;

(b) It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

(c) Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

(a) Ought to have assumed that the property was the proceeds of crime;

(b) Acted for the purpose of making a profit;

(c) Acted for the purpose of promoting the perpetration of further criminal activity.

[4. States Parties shall take appropriate measures to ensure that assets generated by illegal activity or its proceeds are not made legal and shall take legal measures to ensure that:

(a) A person convicted as a member of organized crime shall prove the legality of the purchase of goods that belong to him [or her] or in respect of which he [or she] acts as owner, otherwise they shall be confiscated;[14]

(b) Goods that are the proceeds of the illegal activities of organized crime cannot be transferred as an inheritance, bequest or gift or in any other way;

(c) Goods that are the proceeds of illegal activities will be deemed illegal, and legal principles shall not apply to them;

(d) States shall establish fines as penalties in proportion to the sums obtained by the activities of organized crime.]

[5. States Parties shall adopt appropriate measures to apply instruments that relate to money-laundering to banking or financial markets, including stock exchanges, *bureaux de change*, etc.]

6. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

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[14]Some delegations expressed reservations stemming from difficulties of a constitutional nature regarding reversal of the burden of proof.

Article 4 bis
Measures to combat money-laundering[15]

1. Each State Party shall institute a domestic regulatory regime for financial institutions[16] doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

(a) The licensing and periodic examination of such institutions;

(b) The elimination of bank secrecy laws that may impede the operation of States Parties' anti-money-laundering programmes;[17]

(c) The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

(d) Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

(e) Requiring such institutions to report suspicious or unusual transactions.

2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

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[15]There was no discussion on this article during the informal preparatory meeting. One delegation expressed the view that this issue should be viewed taking into account other regional initiatives.

[16]The term "financial institution" includes, at a minimum, banks, other depository institutions, and appropriate non-bank providers of financial services (such as securities dealers or brokers, commodities futures dealers or brokers, currency dealers and exchangers, fund transmitters and casinos).

[17]One country expressed reservations regarding the elimination of bank secrecy.

5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the 40 recommendations of the Financial Action Task Force on Money-Laundering, as well as other relevant anti-money-laundering initiatives endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 5
Corporate [criminal] liability

Option 1

Each State Party shall, as necessary, establish in its domestic legislation the possibility that legal persons may be held liable if they [knowingly commit or otherwise participate in], [or derive profits from], an offence established in article(s) ___ [alternatively: an offence covered by this Convention].[18] Subject to the fundamental legal principles of the State Party, such liability of the legal person may be criminal, civil, administrative or commercial. Such liability shall be without prejudice to the criminal liability of the natural persons who were the perpetrators of the offences or of their accomplices. Each State shall ensure, in particular, that legal persons may be penalized in an effective, proportionate and dissuasive manner and that material and economic sanctions may be imposed on them.[19]

Option 2

Each contracting State shall consider including in its domestic legislation the possibility of holding private bodies or public corporate bodies of private benefit liable for profiting from organized crime or for operating as cover for a criminal organization.

Article 6
Effective prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] liable to sanctions that take into account the grave nature of those offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.[20]

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[18]The scope of this Convention is still subject to deliberation. For this reason, throughout the present text the alternatives "an offence established in article(s) ___" (which in the current draft would be articles 3 and 4, on participation in a criminal organization, and money-laundering) and "an offence covered by this Convention" (which would have a broader scope, as established by article 2) are provided, as appropriate.

[19]This paragraph combines options 1 and 3 in the earlier text of document CICP/CONV/WP.1 and was not discussed at the informal preparatory meeting.

[20]With respect to the sanctions referred to here, it was noted that, according to article 1, paragraph 4, States may adopt stricter or more severe measures than those foreseen in the Convention. Another suggestion was to include a provision that would encourage States to consider the commission of an offence by a criminal organization an aggravating circumstance for the purpose of sanctioning.

2. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that are the subject of this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences that are the subject of this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that is the subject of this Convention, and a longer period where the alleged offender has evaded the administration of justice.

5. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence that is the subject of this Convention, who is found within its territory, is present at the necessary criminal proceedings.

Article 7
Confiscation

Option 1

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from an offence established in article(s) ___ [alternatively: from an offence covered by this Convention] or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in an offence established in article(s) ___ [alternatively: in an offence covered by this Convention].

Option 2

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. For the purposes of paragraphs 1 and 2 of this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) ___ [alternatively: over an offence covered by this Convention], the State Party in whose territory proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, insofar as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party;

(b) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) ___ [alternatively: over an offence covered by this Convention], the requested Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party;

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party;

(d) The provisions of article ____ (on mutual assistance) are applicable *mutatis mutandis*. In addition to the information specified in article ____, paragraph ____, requests made pursuant to this article shall contain the following:[21]

(i) In the case of a request pertaining to subparagraph (a) (i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a) (ii), a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting State Party and a description of the actions requested;

(e) Each State Party shall furnish the Secretary-General with the text of any of its laws and regulations that give effect to this paragraph and the text of any subsequent changes to such laws and regulations;[22]

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[21]It was suggested that subparagraph (d) could be transferred to the article on mutual legal assistance.

[22]It was suggested that subparagraph (e) could be transferred to the article on the role of the United Nations and other organizations.

(f) If a State Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis;

(g) States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

5. (a) Proceeds of crime or property confiscated by a State Party pursuant to paragraph 1 or paragraph 4 of this article shall [, without prejudice to the rights of bona fide third parties,] be returned to its bona fide lawful owner where such owner can be identified. In other respects, said proceeds or property shall be disposed of by that Party according to its domestic law and administrative procedures;[23]

(b) When acting on the request of another State Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against organized crime;

(ii) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds of crime have been transferred or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds;

(b) If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds;

(c) Income or other benefits derived from:

(i) Proceeds of crime;

(ii) Property into which proceeds of crime have been transformed or converted; or

(iii) Property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. Each State Party may consider ensuring that the onus of proof is reversed regarding the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

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[23]It was suggested that there should be no confiscation by the State of any property to which a bona fide third party had a legitimate claim.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Cooperation under this article may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

Article 8
Transparency of transactions[24]

1. States Parties shall implement measures to detect and monitor the physical transportation of cash and bearer-negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

2. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, States Parties shall take measures to gather financial information and, as much as possible, shall facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies.

Article 9
Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) ___ when the offence is committed in the territory of that State or on board a vessel or aircraft registered in the State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The alleged offender is a national [or a habitual resident] of that State;

(b) The offence was committed against [that State or] a national of that State[; or]

[(c) The offence has substantial effects in that State].

[2 *bis*. Paragraph 2 may also apply to other offences mentioned in this Convention.]

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

4. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other multilateral treaty.

5. In a case where more than one State claims jurisdiction over an offence covered by the present Convention, the States concerned undertake to coordinate their actions in an effective manner, in particular regarding the conditions of exercising prosecution and the modalities of recourse to mutual assistance.[25]

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[24]It was noted that this article would be superseded by article 4 *bis*.

[25]It was suggested that there should be provision for the settlement of disputes over jurisdiction.

[6. A State Party shall inform the Secretary-General of the establishment of jurisdiction under paragraph 2.]

Article 10
Extradition

1. This article shall apply to the offences established by the States Parties in accordance with article(s) ___ [alternatively: to an offence covered by this Convention].

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

Option 1

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may[26] [, at its option,] consider this Convention the legal basis for extradition in respect of any offence to which this article applies. [Extradition shall be subject to the other conditions provided for by the law of the requested State.] The Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

Option 2

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it shall consider the present Convention the legal basis for extradition in respect of any offence to which this article applies. [Extradition shall be subject to the other conditions provided for by the law of the requested State.] The Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.[27]

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between them [, subject to the conditions provided for by the law of the requested State].[28]

Option 1

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

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[26]It was suggested that, as demonstrated in the implementation of similarly formulated provisions in the 1988 Convention, the use of the word "may" provided States with extensive discretion, which entailed the risk of rendering such a provision ineffective.

[27]See footnote 26 above. It was suggested that the word "shall" as used in this option would give preferential status to this Convention in extradition. Such a course of action would require much more detailed provisions on extradition.

[28]It was suggested that the substance of this paragraph could be integrated with a more general article on the relationship of this Convention to other bilateral or multilateral treaties.

Option 2

5. With respect to the offences as [defined] [covered] in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention.

[6. The offences established in article(s) ____ [alternatively: the offences covered by this Convention] shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.]

Option 1

7. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his [or her] race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

Option 2

7. Extradition shall not be granted if the requested State Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his [or her] race, religion, [gender], nationality or political opinion, or that a person's position may be prejudiced for any of these reasons.

Option 1

8. Cooperation under this article or under article(s) ____ may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

Option 2

8. Extradition shall not take place if:

(a) In respect of the person whose extradition is requested, criminal proceedings have been instituted or a judgement rendered by the judicial authorities of the requested State Party;

(b) By the date of receipt of the extradition request the statute of limitations in respect of the criminal case has elapsed under the legislation of one of the States;

(c) The act giving rise to the extradition request is deemed a political offence;

(d) The person whose extradition is requested is under the age of 18 years;

(e) The person whose extradition is requested is at risk of being subjected to persecution or discrimination on the grounds of race, religion, sex, nationality, language or political convictions;

(f) As at the date of receipt of the extradition request, the person whose extradition is requested is a citizen of the requested State;

(g) The act giving rise to the extradition request was committed entirely or in part in the territory of the requested State.

[9. For purposes of extradition between the States Parties, none of the offences established in article(s) ____ [alternatively: none of the offences covered by this Convention] shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.]

10. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

11. Subject to the provisions of its domestic law and its extradition treaties, the requested States Parties may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his [or her] presence at extradition proceedings. [Such State shall immediately make a preliminary inquiry, in accordance with its own laws.]

12. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender is found shall:

(a) If it does not extradite him [or her] in respect of an offence established in accordance with article(s) ____ [alternatively: in respect of an offence covered by this Convention], on the grounds set forth in article ____, paragraph ____, subparagraph ____, submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting State Party;

(b) If it does not extradite him [or her] in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article ____, paragraph ____, subparagraph ____, submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting State Party for the purposes of preserving its legitimate jurisdiction.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party, or the remainder thereof.

14. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

15. States Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

Article 11
Obligation to extradite or prosecute (aut dedere aut judicare)

Option 1

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established by this Convention, where the alleged offender is present in its territory and, solely on the basis of the nationality of the person sought, it does not extradite that person or conditionally extradite that person for trial pursuant to article(s) ____ to any of the States Parties that have established their jurisdiction in accordance with this article.

Option 2

1. The State Party in the territory of which the offender or the alleged offender is found, if [, solely on the basis of the nationality of the person sought,] it does not extradite that person or [temporarily] transfer] [conditionally extradite] that person for trial pursuant to article(s) ____, shall be obliged, upon request of the State Party seeking extradition or transfer, in cases where article(s) ____ applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State Party in the territory of which that person is present.

Article 12
Extradition of nationals

Option 1

1. Each State Party shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence established in article(s) ___ [alternatively: any offence covered by this Convention].

2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the request[ed] State Party.

Option 2

If a State Party denies extradition to another State Party for an offence established in article(s) ___ [alternatively: for an offence covered by this Convention] because the person sought is a national of the requested Party, the requested Party shall, upon request of the requesting Party, transfer the person to the requesting Party for trial or other proceedings and the person transferred shall be returned to the requested Party to serve any sentence imposed in the requesting Party as a result of the trial or proceedings for which transfer was made.

Option 3

If a State Party does not extradite its nationals, such Party shall undertake to make a periodic review of its domestic legislation in order to determine whether extradition or conditional extradition of nationals might be permitted.

Article 13
Consideration of requests for extradition

Option 1

1. States Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for extradition and any communication thereto shall be effected between the authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.

Option 2

1. With a view to facilitating cooperation within the framework of the Convention, States Parties shall establish central authorities, which shall communicate directly between themselves. The central authorities shall be responsible for handling incoming and outgoing requests for extradition and mutual legal assistance.

2. [Notwithstanding paragraph 1,] States Parties, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries and extraditing persons based only on warrants of arrests or judgements.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) To communicate with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State Party in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

Article 14
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legislation on legal assistance[29] in investigations, prosecutions and judicial proceedings in relation to an offence established in article(s) ___ [alternatively: to an offence covered by this Convention] and shall exercise flexibility[30] in the execution of requests for such mutual assistance.

2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[31]

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures;

(d) Examining objects and sites;

(e) Providing information and evidentiary items;

(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the appearance of persons in the requesting State;

(i) Any other type of assistance allowed by the law of the requested State.

3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual assistance in criminal matters.[32]

4. Paragraphs 6-21 shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the

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[29]Some delegations expressed the concern that this provision could limit the obligations under this article. As issues related to the manner of execution of requests for mutual assistance were governed by paragraph 10, there was no need for this provision. Other delegations felt that the provision should be retained and moved to the first line of the paragraph after the word "shall".

[30]Some delegations felt that this term was ambiguous and perhaps a better formulation could be found, as there was agreement that the purpose of the paragraph was to ensure that the article would be interpreted in a manner that would facilitate mutual assistance.

[31]Some delegations felt that article 14 should not create detailed obligations to provide specific forms of mutual assistance. In their view, paragraph 2 could instead read as follows: "States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them or pursuant to domestic law".

[32]See footnote 28 above.

corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6-21 of this article in lieu thereof.

5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.

7. States Parties shall [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree. Transfer under this paragraph shall not be for the purpose of standing trial. For purposes of this paragraph:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][33] or as otherwise agreed by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he was transferred for time served in the custody of the State to which he or she was transferred.

8. States Parties shall designate a central authority, or when necessary central authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution.[34] Central authorities shall play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization (Interpol), if possible.

9. Requests shall be made in writing or by any means capable of producing a written record[35] in a language acceptable to the requested State Party. The Secretary-General shall be notified of the language or

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[33]The expression "as soon as circumstances permit" was considered by some delegations to be ambiguous and, therefore, it was proposed to delete it.

[34]It was noted that this provision might cause difficulties in respect of territories that did not have full sovereignty.

[35]It was agreed that this expression should be deemed to include the submission of a request by modern means of communications, under circumstances that provide an indication of authenticity.

languages acceptable to each Party. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

(c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.

11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. Wherever possible and consistent with fundamental principles of domestic law, States Parties shall permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and shall ensure that perjury committed under such circumstances is a criminal offence.

14. The requesting State Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

16. Mutual legal assistance may be refused:[36]

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

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[36]Other grounds for refusal might be required. One possible additional ground might be a "discrimination clause" as in article 6, paragraph 6, of the 1988 Convention. Another ground may be a "political offence", in which case paragraph 17 would require re-examination.

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;[37]

(e) If the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

17. For the purpose of cooperation under this article, the offences covered by this Convention shall not be considered fiscal offences or political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

18. Reasons shall be given for any refusal of mutual legal assistance.

19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

20. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.[38]

21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

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[37]Some delegates expressed concern about this ground for refusal.

[38]Some delegations thought a degree of discretion could be provided to the requesting State in determining whether to provide safe conduct. One delegation expressed a reservation on this paragraph.

Article 15
Special investigative techniques

1. If permitted by the basic principles of their respective domestic legal systems, States Parties shall take the necessary measures to provide a legal basis for the use of special investigative techniques, such as controlled delivery, surveillance, including electronic surveillance, and undercover operations,[39] for the purpose of gathering evidence and taking legal action against persons involved in an offence established in article(s) ___ [alternatively: in an offence covered by this Convention].

2. States Parties shall consider extending the use of the special investigative techniques referred to in paragraph 1 at the international level, on the basis of agreements or arrangements.

3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part.

Article 16
Transfer of proceedings[40]

States Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.

Article 17
Recognition of foreign judgements[41]

Each State Party shall take legislative measures to recognize, in their domestic law, the previous foreign conviction for an offence established in article(s) ___ [alternatively: for an offence covered by this Convention] for the purpose of establishing the criminal history of the alleged offender.

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[39]It was suggested that the *travaux préparatoires* should include definitions of electronic surveillance and undercover operations.

[40]Some delegations felt that the subject matter of this article could be best treated under article 9, paragraph 5, or those portions of articles 11 and 12 that deal with domestic prosecution in lieu of extradition of nationals.

[41]This article was the subject of extensive discussion. While it was agreed that for purposes of investigation, prosecution and adjudication information on the criminal history of a suspect or defendant might be requested, there were difficulties in formal recognition of foreign judgements. Some delegations felt that it would be useful if a prior foreign conviction were to be taken into account in subsequent sentencing proceedings. In connection with this article, three possible solutions were envisaged by some delegations: (a) prior convictions could be considered information, along the lines of article 18 *bis*; (b) States could undertake to respond to requests, made in the context of mutual legal assistance, related to prior convictions of an individual; and (c) the article could be redrafted in a more discretionary manner, that is, "Each State should adopt ...".

Article 18
Protection of witnesses and victims[42]

1. Each State Party shall adopt measures to provide effective and appropriate protection from potential retaliation or intimidation for witnesses in its criminal proceedings who agree to give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.[43]

2. The measures envisaged in paragraph 1 include:[44]

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and to permit, where appropriate, non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology or other means in a manner not prejudicial to the rights of the defence.[45]

3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1.

4. States Parties shall take measures to provide assistance to victims of crimes covered by this Convention, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against the offenders in a manner not prejudicial to the rights of the defence, and establish procedures relating to restitution by offenders to victims of such crimes.

Article 18 bis
Measures to enhance cooperation with law enforcement authorities

1. States Parties shall promote appropriate methods of obtaining information and testimony from persons who are willing to cooperate in the investigation and prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] and shall, as appropriate, assist each other in promoting such cooperation.

2. In particular, each State Party shall [ensure] [consider the possibility of ensuring] that its domestic legal framework permits the possibility, in appropriate cases, that either:

(a) Immunity from prosecution may be granted to a person who provides substantial cooperation with law enforcement authorities in the investigation and prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention]; or

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[42]The drafting of this article requires further consideration.

[43]This term is intended to cover persons who may be subject to danger by virtue of a particularly close relationship with the witness, but who are not relatives.

[44]Depending on the final wording of this paragraph, some of the measures set forth could be optional rather than required.

[45]One delegation expressed the view that the text should make clear that these measures need to be consistent with the right of the defence to cross-examination.

(b) Substantial cooperation provided by an accused person in the investigation and prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] may be considered a mitigating factor in determining the person's punishment.

3. Protection of such persons shall be as provided for in article 18.

4. In principle, the benefit of immunity granted to a state witness shall have effect only in the State Party that granted such immunity. If a second State Party acquires the testimony given by a state witness, such testimony may be used against persons other than the person so cooperating. The State utilizing such testimony shall be required to grant the benefit of immunity to the state witness and may consequently not use such testimony or any evidence directly resulting therefrom against such person. Two or more States may jointly grant benefits of immunity when a transnational organization is under investigation.[46]

5. A State Party may grant benefits to state witnesses in respect of offences committed in the territory of another State Party, and the cooperation of state witnesses may be evaluated with a view to granting them immunity or reduced penalties in conformity with the laws of the first-mentioned State. When a state witness is required to testify before the court of another country, States shall facilitate his or her transfer to the State requiring such testimony. This privilege shall override the claim of a third State to impose punishment.

Article 19
Law enforcement cooperation[47]

1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies.

2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) ___ [alternatively: the offences covered by this Convention]. Each State Party shall, in particular, adopt effective measures:

(a) To establish and maintain channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of a central authority or authorities, to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with one another in conducting inquiries, with respect to offences established in this Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

(ii) The movement of proceeds or property derived from the commission of such offences;

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[46]Paragraphs 4 and 5, on cooperation with law enforcement authorities, were not discussed at the informal preparatory meeting.

[47]While supporting the idea of direct law enforcement cooperation, some delegations felt that this article needed further consideration in order to direct attention to its relationship with more traditional means of cooperation such as mutual assistance.

(iii) The movement of instrumentalities used or intended for use in the commission of such offences;

(c) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;

(d) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(e) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers.

3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) ___ [alternatively: the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[48]

(a) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) ___ [alternatively: of offences covered by this Convention].

[4. States Parties shall:[49]

(a) Designate knowledgeable law enforcement personnel to be available on a 24-hour basis to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology; and

(b) Review their domestic criminal legislation to ensure that such abuses are adequately addressed.]

Article 20
Collection and sharing of information on organized crime

1. States Parties shall consider developing and sharing analytical expertise concerning organized crime activities. In this connection, common definitions, standards and methodologies shall be applied as appropriate.

2. States Parties shall consider, with the support of the scientific community, analysing trends in organized crime in their countries, as well as the circumstances in which organized crime can operate, the professional groups involved and the communications technologies.

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[48]It was proposed that subparagraphs (a) and (b) of this paragraph be transferred to paragraph 2.

[49]This is a new issue proposed for the first time during the informal preparatory meeting and discussed only preliminarily.

3. States Parties shall consider monitoring their policies and actual measures to prevent and combat organized crime and shall make assessments of their effectiveness and efficiency.

4. The Secretary-General, with the assistance of the United Nations Interregional Crime and Justice Research Institute and the other institutes in the United Nations Crime Prevention and Criminal Justice Programme network, shall undertake to collect and analyse public information and research findings concerning organized crime, prepare overviews of global trends in organized crime and prepare inventories of policies and measures to prevent and control organized crime.

Article 21
Training and technical assistance[50]

1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:[51]

(a) Methods used in the prevention, detection and control[52] of the offences established in this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences established in this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of import and export of contraband;

(d) Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations; and

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology.

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[50]Several delegations expressed concern about the fact that this article does not make reference to the role of the United Nations in the provision of training and technical assistance. A draft paragraph or paragraphs on this could be inserted.

[51]It was suggested that the ad hoc committee might wish to consider the establishment, subject to the availability of extrabudgetary resources, of a database that would include training materials as well as information concerning available training programmes. It was also noted that this task could be carried out by an institute in the Programme network.

[52]One delegation expressed concern about the appropriateness of this term in this context.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance. Such techniques may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization (Interpol) and within other relevant bilateral and multilateral agreements or arrangements.

Article 22
Prevention[53]

1. States Parties shall consider taking steps to reduce to the extent possible existing social, legal, administrative or technical opportunities for criminal organizations to commit profitable crimes and to alleviate the circumstances that make socially marginalized groups vulnerable to the prospect of a criminal career.

2. States Parties shall consider setting up or supporting technical cooperation programmes aimed at the prevention of organized crime by social, legal or technical means and shall encourage international funding agencies to promote such programmes.

3. States Parties shall consider collecting and exchanging information with respect to registered legal persons and the physical persons involved in their creation, direction and funding, with a view to preventing the penetration of organized crime in the public and legitimate private sector.

4. States Parties shall consider reviewing their national legislation in order to ensure that it provides for the opportunity to exclude from participation in tender procedures conducted by the State applicants who have committed offences connected with organized crime or whose funds have been illegally acquired.

5. States Parties undertake that their organs and services, in particular their security services, will under no circumstances cooperate with criminal organizations in any way other than using individual informers in the fight against the crimes in which such organizations engage.[54]

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[53]There was widespread acceptance of the principle that the Convention should include provisions on prevention. The delegation of the Netherlands undertook to provide a new text for the first meeting of the ad hoc committee.

[54]This proposal was not discussed at the informal preparatory meeting.

Article 23[55]

Option 1

Article 23
Role of the United Nations and other relevant organizations[56]

1. For the purpose of examining the progress made by States Parties in achieving the fulfilment of the obligations undertaken in the present Convention, these States will provide periodic reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

2. States Parties undertake to provide such reports within two years of the entry into force of the Convention for the State concerned, and thereafter every five years.

3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

4. A State Party that has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

5. The Commission may request from the States Parties further information relevant to the implementation of the Convention.

6. States Parties shall provide, as appropriate, reports to the Secretary-General on current and emerging organized crime activities in their States,[57] as well as on their experience with preventive measures and control measures.[58]

7. The Commission shall make its recommendations and submit reports on its activities to the Economic and Social Council, in accordance with existing provisions.

8. States Parties shall make their reports widely available to the public in their own countries.[59]

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[55]The content of this article requires further consideration.

[56]It was suggested that this article would require extensive redrafting since it included language that would perhaps be more appropriate in a resolution rather than in a treaty. Furthermore, it was suggested that a monitoring or follow-up mechanism would require a thorough discussion of issues such as confidentiality in respect of any reports containing sensitive operational information and involvement of non-governmental organizations.

[57]Some delegations felt that it might be difficult for States Parties to provide reports on sensitive ongoing investigations.

[58]It was suggested that provisions might be inserted in this article on the possible role of the United Nations in preparing reports on current and emerging organized criminal activities, as well as on national experience with preventive measures and countermeasures, and in collecting and analysing information and research findings.

[59]A number of delegations thought that public dissemination of reports might not be advisable.

9. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) Intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council and other invited multilateral organizations shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations entities to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Commission shall transmit, as it may consider appropriate, to the intergovernmental and non-governmental organizations, other multilateral organizations and the specialized agencies any reports from the States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on those requests or indications;

(c) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

(d) The Commission may make suggestions and general recommendations based on information received pursuant to article(s) ____ of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the Economic and Social Council, together with comments, if any, from the States Parties.

Option 2

Article 23
Monitoring of implementation[60]

1. States Parties shall cooperate in carrying out a programme of systematic monitoring of the implementation of the measures provided for by this Convention to combat organized crime.

2. A committee of the States Parties shall be established for the purpose of carrying out monitoring functions under this article. The Committee shall:

(a) Adopt periodic reports evaluating implementation by States Parties and adopt and issue reports on its own activities;

(b) Promulgate procedures for assessing the level of implementation by States Parties (including with respect to submission of information by the Party being evaluated, the formation of evaluation teams made up of experts from States Parties to visit that Party and preparation of a preliminary evaluation for consideration by the Committee, and the discussion and adoption of the final evaluation report) and for carrying out its other functions.

3. Meetings of the Committee shall be held at [insert location] once a year or, where circumstances require, in special session. They shall be held in camera.

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[60]This is a new proposal and was discussed only preliminarily.

4. Every effort shall be made to reach decisions by consensus in the Committee. If consensus cannot be reached, decisions on substantive matters must be approved by a two-thirds majority of those States Parties present and voting, an absolute majority of States Parties constituting a quorum, while decisions on procedural matters shall be taken by a simple majority of those States Parties present and voting.

5. Expenses incurred in conjunction with the work of the Committee shall be paid from assessed contributions made by States Parties and voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Committee.

Article 24
Relation with other conventions

Option 1

This Convention shall not prejudice the application of other United Nations conventions on criminal matters.[61]

Option 2

The provisions of the present Convention shall prevail over those of other United Nations conventions dealing with the same matters.

Article 25
Settlement of disputes[62]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of ratification of or accession to this Convention declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to [the Secretary-General of the United Nations].

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[61]It was observed that this article might also have to address the relationship with bilateral and regional treaties.

[62]It was observed that consideration would need to be given to the 1988 Convention in drawing up this article.

Article 26
Signature, ratification, accession and reservations

1. This Convention shall be open to all States for signature from _____ to ____, and thereafter at the Headquarters of the United Nations in New York until ____.

2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

4. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.[63]

5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with [the Secretary-General of the United Nations].

Article 27
Entry into force[64]

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 28
Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States

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[63]It was suggested that paragraphs 3, 4 and 5 were not appropriate. The observation was also made that in order to ensure that reservations could not be made, an express provision to that effect was required. Otherwise, general international law on treaties (and in particular the Vienna Convention on the Law of Treaties) would nonetheless allow reservations to be made. Other delegations expressed their strong preference for an article that would specifically allow for reservations.

[64]The number of instruments of ratification foreseen in this article is the same as that required in the 1988 Convention. One delegation thought that 40 might be a more appropriate number.

Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted.

Article 29
Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 30
Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Convention.

2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.